THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.28139 OF 2005

DATED:2.1.2006

Between:

K. Narsing Rao

…Petitioner

And

The Commissioner, Municipal Corporation of Hyderabad

Tank Bund Road, Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.28139 OF 2005

ORDER:

The petitioner is tenant of premises (mulgi) No.18-7-881 admeasuring 30' x 12'. The property is situated outside Gowlipura and belongs to fourth respondent herein, who allegedly lost Rent Control Case for eviction. Be that as it is, the Municipal Corporation of Hyderabad (MCH) took up the work of widening the road and issued a notice to the landlord who gave consent to voluntarily handover possession affected by road widening. Having come to know this, the petitioner gave a representation on 28.6.2005 expressing his willingness to the extent of 15' of the shop portion and also requested the respondents to permit him to remove the affected area of 15' frontage so that he can carry on business in the remaining portion. No action was taken thereon. But, it is alleged that two days ago, the

respondents came to the premises and informed that the entire shop will be demolished. Aggrieved by the same, present Writ Petition is filed.

The learned counsel placed reliance on the judgment of the Division Bench in **M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad** and **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** and submit that mere consent by the landlord would not enable the MCH to forcibly take possession of the property in possession of the tenant. The legal position is neither disputed nor denied. In **Srichand Rohra case (**supra) this Court considered this aspect of the matter and having regard to the dicta laid down in **M/s.Ushodaya Publications case** (supra) observed as under.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.
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> In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in *M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad* the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

Following the above judgment, this Writ Petition is disposed of observing that unless and until the petitioner gives consent there cannot be any demolition of the petitioner shop. However, as the petitioner is willing to give 15' of shop portion, it shall be open to MCH to proceed further by allowing the petitioner to remove 15' affected portion. Insofar as other portion is concerned, first respondent is required to give a notice to the tenant, if he is in possession of the property.

The Writ Petition with the above observations and directions is accordingly disposed of.

(V.V.S.RAO, J)

2.1.2006

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